

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION**

JOHN W. ROELLCHEN,	§	
	§	
Plaintiff,	§	
	§	
v.	§	CIVIL ACTION NO. <u>5:21-cv-00487</u>
	§	
CAPITAL ONE AUTO FINANCE,	§	
	§	
Defendant.	§	

**DEFENDANT CAPITAL ONE AUTO FINANCE, A DIVISION OF CAPITAL ONE,
N.A.’S NOTICE OF REMOVAL**

Defendant Capital One Auto Finance, a Division of Capital One, N.A., (hereinafter, “Capital One”), hereby submits this Notice of Removal of the action from the Justice Court Precinct One, Place Two, of Bexar County, Texas to the United States District Court for the Western District of Texas, San Antonio Division, the District and Division encompassing the state court in which this action is pending. 28 U.S.C. § 124(d)(4). Capital One invokes this Court’s jurisdiction under the provisions of 28 U.S.C. §§ 1441(a) and 1331, and removes this action from state court to federal court pursuant to 28 U.S.C. § 1446(b). In support, Capital One respectfully shows the Court as follows:

A. STATEMENT OF THE CASE

1. On March 15, 2021, Plaintiff John W. Roellchen (“Plaintiff”) filed his Petition (the “Petition”) in the Justice Court Precinct One, Place Two, of Bexar County, Texas, styled *John Roellchen v. Capital One Auto Finance*, and designated as Case No. 12S2100062 (the “Action”). In accordance with 28 U.S.C. § 1446(a), a true and correct copy of all process, pleadings and orders

received by Capital One from Plaintiff in this Action, filed by Capital One in this Action, and those records obtained directly from the Court's file for this Action are attached hereto as Exhibit A.¹

2. The Petition alleges that Plaintiff is suing Capital One for violation of the Fair Debt Collection Practices Act ("FDCPA"), codified at 15 U.S.C. §§ 1692 *et seq.* (and references the Fair Credit Reporting Act ("FCRA"), codified at 15 U.S.C. §§ 1681, *et seq.*, but does not specifically allege a violation of the FCRA). *See* Petition.

B. JURISDICTION

3. Capital One specifically alleges that this Court has federal question jurisdiction over this action pursuant to 28 U.S.C. §§ 1441(a) and 1331, because Plaintiff alleges that he is suing Capital One for violations of the FDCPA. *See* Petition.

4. Although Plaintiff's Petition does not identify any state law claims, the Court would have supplemental jurisdiction over any state law causes of action alleged by Plaintiff pursuant to 28 U.S.C. § 1367(a).

5. Thus, Capital One specifically alleges that this Court has federal question jurisdiction over this action pursuant to 28 U.S.C. §§ 1441(a) and 1331, because this Court would have had original jurisdiction founded on Plaintiff's claims arising under the FDCPA, a law of the United States.

C. BASIS FOR REMOVAL

6. This Court has jurisdiction over this Action pursuant to 28 U.S.C. § 1331, because Plaintiff's claim arises under the FDCPA, which is a law of the United States. Indeed, Plaintiff's Petition specifically alleges that he is suing Capital One for violations of the FDCPA. *See* Petition.

¹ Capital One has redacted personal identifying information reflected on documents attached to Plaintiff's Petition. In addition, Capital One requested a copy of the docket sheet in the Action but was advised by the Court Clerk's office that one could not be provided.

Adjudication of Plaintiff's Petition thus requires an analysis and construction of federal law—namely, the FDCPA. Accordingly, this Action may be removed to this Court by Capital One pursuant to 28 U.S.C. §§ 1441(a) and 1331, because this Court would have had original jurisdiction founded on Plaintiff's claims arising under the FDCPA.

D. ALL PROCEDURAL REQUIREMENTS FOR REMOVAL HAVE BEEN SATISFIED

7. Removal of this action is timely. Capital One's records reflect that the Petition was served via certified mail and received by Capital One's registered agent for service of process on April 22, 2021. Therefore, this Notice of Removal is "filed within thirty [30] days after receipt by the defendant . . . of a copy of the initial pleading" in accordance with the time period mandated by 28 U.S.C. § 1446(b).

8. As Capital One is the sole defendant named in the action, there are no other defendants to consent to removal.

9. Venue lies in the United States District Court for the Western District of Texas pursuant to 28 U.S.C. § 1441(a), because the Action was filed in Bexar County, Texas, which lies within this District.

10. As stated above, pursuant to 28 U.S.C. § 1446(a), a true and correct copy of all process, pleadings and orders received by Capital One from Plaintiff in this Action, pleadings filed by Capital One, as well as those documents obtained directly from the Court's file for this Action, are attached hereto.

11. Written notice of the filing of this Notice of Removal will be promptly served upon Plaintiff, and Capital One will comply with relevant local rules of this Court through its further filings herein. Capital One will also promptly file a copy of this Notice with the Clerk of the Justice Court Precinct One, Place Two, County of Bexar, State of Texas.

WHEREFORE Capital One prays that the above Action now pending against it in the Justice Court Precinct One, Place Two, County of Bexar, State of Texas, be removed therefrom to this Court.

Respectfully submitted,

BURKE BOGDANOWICZ PLLC

By: s/ David Herrold

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**Attorneys for the Defendant,
CAPITAL ONE AUTO FINANCE, A DIVISION
OF CAPITAL ONE, N.A.**

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on May 21, 2021, pursuant to Fed.R.Civ.P. 5(b)(2)(C), he caused a true and correct copy of the above and foregoing instrument to be deposited into the U.S. Mails, all postage prepaid thereon, addressed to:

John W. Roellchen, *pro se*
2102 Mathies Court
San Antonio, TX 78236

s/ David Herrold